S.B.Civil Misc. Application No. 23/2006
in
S.B. Civil Second Appeal No. 130/1982

LRs of late Musha

Vs.

LRs of late Val Chand)

Date : 09.03.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Harish Purohit, for the appellants-applicants.
Mr. Arvind Shrimali, for the respondents.

- - - - -

The application has been filed by the applicants for setting-aside of abatement of S.B. Civil Second Appeal No. 130/1982. The appellant No.1 Musha preferred second appeal against the judgment and decree of the first appellate court dated 21.8.1982. The appeal was admitted on 22.12.1982 after formulating substantial questions of law. According to the applicants-appellants, their advocate elevated to the Bench and thereafter the case file was handed-over to learned counsel Mr. S.K. Sharma, who unfortunately expired on 19.4.2005. The appellants were not knowing about death of their counsel and after death of learned counsel the appellants-applicants received a communication from learned counsel Mr. Sanjay Mathur on 15.3.2006 by which the appellants were intimated that they may take the case file of decided appeal of S.B. Civil Second Appeal No. 130/1982 and the record which is still lying in the office of the advocate.

During the pendency of the second appeal, respondent Valchand expired on 16.11.1991 and the appeal remained pending for hearing in due course and appeal was not listed for hearing. However, in the year 1999, counsel for the respondent informed that sole respondent expired in the year 1987. It appears from the order dated 17.1.2000 that learned counsel Mr. S.K. Sharma informed that he wrote a letter to the appellant, but he has not received any communication from the appellant.

In view of the above, the appeal was dismissed. It is submitted that since the appellants-applicants had no knowledge of all these proceedings taken in S.B. Civil Second Appeal, therefore, they could not move any application in time for setting-aside the abatement of the second appeal.

Learned counsel for the appellants-applicants pointed out that despite dismissal of the appeal as abated as back as on 17.1.2000, the decree holders have not executed the decree and now they initiated the execution proceedings, therefore, also the appellants had no knowledge of the dismissal of the second appeal.

Learned counsel legal representatives of sole respondent vehemently submitted that the application has been filed after inordinate delay and therefore, same has been dismissed.

I considered the submissions of the learned counsel for the appellants-applicants and learned counsel for the respondents and perused the record of S.B. Civil Second Appeal No. 130/82.

Since the appellants engaged advocate and their advocate was elevated to the Bench and thereafter, the appellants took care in engaging other advocate, who unfortunately died and since the appellants' contention is that they had no knowledge of death of learned counsel Mr. S.K. Sharma and had no knowledge of the proceedings in the appeal, therefore, they could not move application in time. The reasons given in the application are disclosing sufficient cause for not moving application in time, therefore, the delay in filing application is condoned. The abatement of S.B. Civil Second Appeal No. 130/82 is set-aside. The legal representatives of sole respondent named in the present application are also taken on record. Copy of this order may also be placed in file in S.B.C.S.A. No.130/82. The appellants may file amended cause title within two weeks from today. No need to issue notice to the legal representatives of sole respondent as learned counsel Mr. Arvind Shrimali appeared on their behalf.

(PRAKASH TATIA), J.

Rm/